

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**IN RE THE ESTATE OF ARTHUR E.
PETHAN, DECEASED;**

**MARY LU BROWN, PERSONAL
REPRESENTATIVE OF THE ESTATE
OF ARTHUR E. PETHAN, DECEASED**

RESPONDENT,

**v.
DAVID A. HEIN**

APPELLANT.

DOCKET NUMBER WD78157

DATE: September 22, 2015

Appeal From:

Cooper County Circuit Court
The Honorable Keith M. Bail, Judge

Appellate Judges:

Division One: Cynthia L. Martin, Presiding Judge, Joseph M. Ellis, Judge and James E. Welsh,
Judge

Attorneys:

R. Caleb Colbert, Columbia, MO, for respondent.

Gabriel E. Harris, Jefferson City, MO, for appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

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Cooper County

Before Division One: Cynthia L. Martin, Presiding Judge, Joseph M. Ellis, Judge and James E. Welsh, Judge

David A. Hein appeals a judgment that sanctioned him for discovery violations by striking his answer and affirmative defenses and that entered judgment in favor of Mary Lu Brown on one of two counts in Brown's petition seeking the discovery of assets in a probate proceeding. Hein also appeals from an order granting Brown's motions for bond forfeiture and civil contempt after Hein violated the terms of a consent order.

Appeal Dismissed.

Division One holds:

Hein's appeal from the sanctions judgment is moot. After the sanctions judgment was entered, the trial court entered a consent order that outlined Hein's and Brown's agreement in which Hein would deliver the property specified in the sanctions judgment at a specific time and that Hein would post a bond to ensure delivery. Hein voluntarily delivered the property at the specified time and posted the bond. By agreeing to the terms of the consent order and by performing the terms of the consent order, Hein implicitly recognized the validity of the sanctions judgment. The relief awarded by the sanctions judgment has been voluntarily performed by Hein, and any decision from this court resolving Hein's claim of error would have no practical effect, rendering Hein's appeal moot.

Hein's appeal from an order granting Brown's motions for bond forfeiture and civil contempt must be dismissed. The order is not appealable because it is not designated a judgment, and there is no indication within the body of the order that the trial court considered the order to be a judgment.

Opinion by Cynthia L. Martin, Judge

September 22, 2015

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